

## **EXHIBIT D. RESTRICTIVE COVENANT**

## **RESTRICTIVE COVENANT**

Grantor: Lincoln County  
PO Box 366-450 Logan Street  
Davenport, WA 99122

Grantee: Washington Department of Ecology  
4601 North Monroe  
Spokane, WA 99205-1295

### Legal Description:

Lots 1, 2, 15, 16, Block 82; vacated street north of Block 82; east 50 feet of the vacated alley in Block 82, the east 50 feet of Knox Street between Blocks 81 and 82, Railroad Addition to the Town of Wilbur.

Lots 3 through 14, Block 82; west 150 feet of the vacated alley in Block 82, Railroad Addition to the Town of Wilbur.

## RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant has been the subject of remedial action under Chapter 70.105D RCW. The work done to clean up the property and conduct long-term operation and maintenance (hereafter the "Cleanup Action") is described in the Consent Decree entered in State of Washington Department of Ecology v. Lincoln County, Lincoln County Superior Court Cause No. \_\_\_\_\_, and in attachments to the Decree and in documents referenced in the Decree. This Restrictive Covenant is required by Ecology under Ecology's rule WAC 173-340-440 (2001 ed.) because activities on the Site resulted in residual concentrations of hazardous substances which exceed Ecology's Method B cleanup levels for groundwater established under WAC 173-340-730(3).

The undersigned, Lincoln County ("The County") is the fee owner of real property (hereafter "the Property") in the County of Lincoln, State of Washington (legal description and map attached), that constitutes part of the South Wilbur Petroleum Contamination Site. The County makes the following declaration as to limitations, restrictions, and uses to which the Property may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property.

### Section 1.

- a. No groundwater may be taken for any use unless the groundwater removal is part of monitoring activities associated with an Ecology-approved compliance monitoring plan.
- b. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Cleanup Action, or that may create a new exposure pathway, is prohibited. Such prohibited activities include, but are not limited to, drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Notwithstanding the prohibitions contained within this declaration, the Owner may maintain, repair or replace existing underground utilities or perform minor site grading provided that the work is conducted by individuals who are properly trained in appropriate health and safety precautions necessary for working within hydrocarbon affected soil and groundwater and any hydrocarbon affected soil or groundwater encountered during such work is handled and disposed of in accordance with all applicable local, state, and federal regulations and requirements.

Section 2. Any activity on the Property that may interfere with the Cleanup Action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited.

Section 3. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Cleanup Action on the Property, and for continued compliance with this section.

Section 4. The Owner must restrict leases to uses and activities consistent with this Restrictive Covenant and notify all lessees of the restrictions herein on the use of the Property.

Section 5. The Owner must include in any instrument conveying any interest in any portion of the Property, notice of this Restrictive Covenant.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve an inconsistent use only after an opportunity for public notice and comment is provided. If Ecology, after public notice and opportunity for comment, approves the proposed change, the restrictive covenant shall be amended to reflect the change.

Section 7. The Owner shall allow Ecology and its authorized representatives the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action, to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 8. If the conditions at the site requiring the entry of this Restrictive Covenant no longer exist, the Owner may submit a request to Ecology that the Restrictive Covenant be eliminated. The Owner may record an instrument removing the Restrictive Covenant only if Ecology, after public notice and opportunity for comment, concurs.

Dated: \_\_\_\_\_

LINCOLN COUNTY

\_\_\_\_\_  
signatory

position

STATE OF WASHINGTON )

) ss

COUNTY OF LINCOLN)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, a Notary Public for said state, personally appeared (signatory), known to be (position) of Lincoln County, the corporation that executed the above instrument and acknowledged to that such corporation executed the same.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

# Public Works Ownership Wilbur, Lincoln County, WA

1:3,000  
1 inch equals 250 feet

